



CLOSED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Case No. CV 10-03162 DDP (SSx)
)	
Plaintiff,)	ORDER DENYING EX PARTE
)	APPLICATION TO REOPEN CASE AND
v.)	SET ASIDE ENTRY OF DEFAULT
)	
ONE DINOSAUR EGG COLLECTION)	[Motion filed on December 13,
EMBEDDED IN STONE AND ONE)	2010]
DINOSAUR EMBRYO SKULL,)	
)	
Defendant.)	
_____)	

Presently before the court is Claimant Robert DePalma's ex parte application to reopen the case and to set aside the court's entry of default judgment.

Rule 55(c) provides the standards for determining whether relief from a default entry or default judgment should be granted. It states that an entry of default may be set aside "[f]or good cause shown." Fed. R. Civ. P. 55(c). But when default judgment has been entered, Rule 55(c) refers to Rule 60(b), which provides that relief from a final judgment may be granted only under the following specific conditions:

1 (1) mistake, inadvertence, surprise, or excusable
neglect;
2 (2) newly discovered evidence that, with reasonable
diligence, could not have been discovered in time to
3 move for a new trial under Rule 59(b);
4 (3) fraud (whether previously called intrinsic or
extrinsic), misrepresentation, or misconduct by an
opposing party;
5 (4) the judgment is void;
6 (5) the judgment has been satisfied, released or
discharged; it is based on an earlier judgment that has
7 been reversed or vacated; or applying it prospectively
is no longer equitable; or
8 (6) any other reason that justifies relief.

9 Fed. R. Civ. P. Rule 60(b); see also O'Connor v. Nevada, 27 F.3d
10 357, 364 (9th Cir. 1994).

11 Here, DePalma argues that he was misled by Plaintiff when
12 Plaintiff assured DePalma that Plaintiff was interested in
13 resolving the issue of the Dinosaur eggs without litigation. (Ex
14 Parte Motion ¶ 7.) DePalma further argues that Plaintiff failed to
15 commence its lawsuit for possession of the eggs "in a prompt and
16 reasonable manner" and caused various delays thereby denying
17 DePalma due process. (Id. ¶¶ 9, 13, 14, 15, 19, 20.) DePalma
18 also argues that his age, financial constraints, and poor health
19 affected his ability to timely appear. (Id. ¶¶ 22-27.) In sum,
20 DePalma argues that his default was "not willful, but the result of
21 excusable neglect." (Id. ¶ 30.)

22 The standard for setting aside entry of default judgment under
23 Rule 60(b) is a rigorous one. Here, the court finds that
24 insufficient good cause has been presented to satisfy the court
25 that relief from default judgment is warranted in this instance.
26 DePalma was in continuous contact with the Plaintiff, appraised of
27 all the court dates and appearance deadlines, and failed to timely
28 appear and object to the entry of default, and, thereafter, the

1 entry of default judgment. The court is not satisfied that
2 DePalma's failure to timely pursue his alleged claim was the result
3 of mistake, inadvertence, surprise, or excusable neglect. For the
4 foregoing reasons, DePalma's ex parte application is DENIED.

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7 IT IS SO ORDERED.

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10 Dated: January 18, 2011


DEAN D. PREGERSON
United States District Judge